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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1944

No. 300

GEORGE SAM ALOISIO AND WILLIAM ALOISIO,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.**

JAMES C. LEATON,
Counsel for Petitioners.

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*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioners, George Sam Aloisio and William Aloisio, respectfully submit this petition for a writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Seventh Circuit, affirming their conviction in the District Court of the United States for the Northern District of Illinois, Eastern Division. They were convicted by a jury on an indictment charging in one count an evasion of military service by George Aloisio and aiding and abetting such evasion by William Aloisio, in violation of Section 311, Title 50, U.S.C.A.* The petitioners were each sentenced to five years imprisonment, and to pay the costs of prosecution.

* See Appendix.

SUMMARY STATEMENT OF MATTERS INVOLVED.

Involved in this petition are (1) the stopping of the practice of entrapment by the Federal Bureau of Investigation under circumstances such as shown here wherein at least four persons theretofore innocent were led into the commission of four separate crimes, and (2) relief to the petitioners by reason of (a) their conviction of an offense into the commission of which they were entrapped and (b) the failure of the trial court to properly instruct the jury.

The following summary provides some indication of the application of the points sought to be made. Further details will be found in the brief filed herewith.

REGARDING ENTRAPMENT.

Petitioner George Sam Aloisio was charged with evading military service, and his brother, petitioner William Aloisio, together with one Frank Cerone, was charged with aiding and abetting the evasion. The indictment under which these three were charged (R. 2) was one of four indictments against Cerone. The record discloses that Cerone was implicated in five separate evasions. These evasions were brought about by the bribery of two Chief Petty Officers of the United States Navy assigned to the Induction Center at Chicago.

On the occasion of the first act of bribery and evasion, one of the Officers, acting alone, was bribed. Thereafter, and during the evasion of which these petitioners are charged, this Officer, by reason of his acts having been exposed, was working for and on behalf of the Government; i.e., the Federal Bureau of Investigation. The second Officer was brought into this series of acts by the first Officer, and he was at all times working for and on behalf of the Government.

Cerone was in the scheme from its inception. The petitioners came in only after both Naval Officers were working for the Government, and after the Government through these two Officers, had furnished the facilities and instrumentalities of the crime, and was executing as well as directing it.

The Government did not conceive the crime as committed in the original evasion, but the crime charged against these petitioners was an entirely different one from that originally conceived and executed by Cerone and the first Naval Officer. The Government conceived and executed the crimes of which these petitioners and at least three others were charged.

REGARDING THE INSTRUCTION.

The only actual evasion, as distinguished from a possible intent or attempt to evade with which petitioners were not charged, was the act of the Government in placing on the induction records of the petitioner George Sam Aloisio, with knowledge of their falsity, a stamp bearing the legend, "Rejected by the Armed Forces" and various supporting data. There was no rejection other than this, and as to these acts, the Government committed them in their entirety, and lured the petitioners and others into a questioned participation. These facts were the basis of a requested but rejected instruction to the jury that the acts of Government Agents, which were essential to complete the offense charged could not be imputed to the defendants.

**THE BASIS ON WHICH IT IS CONTENDED THE COURT
HAS JURISDICTION TO REVIEW THE JUDGMENT OF
THE CIRCUIT COURT.**

Jurisdiction to review is provided under Section 240 (a) of the Judicial Code as amended by the Act of February 10, 1925, Section 347, Title 28, U.S.C.A. The judgment appealed from was dated June 30, 1945. A petition for rehearing was denied July 23, 1945.

THE QUESTIONS PRESENTED.

I.

Whether the District and Circuit Court of Appeals have entirely misunderstood and misapplied the law of entrapment as laid down by this Court in *United States v. Sorrells*, 287 U. S. 435, wherein the Court not only outlined the law, but the philosophy underlying the law of entrapment.

II.

Whether the Government can take an isolated offense, and in an attempt to apprehend the perpetrators, conceive of an entirely new and enlarged offense encompassing new, and at that time wholly innocent, persons, furnish the facilities, instrumentalities and manpower for the commission of the offense, and then itself commit all of the acts of the offense and thereafter impute those acts and any necessary intent to persons so entrapped.

III.

Whether the Government, aside from conceiving a crime, can furnish the facilities and instrumentalities of a crime, and lay a trap for those not engaged in criminal enter-

prises and with no record of prior crimes of a like or other nature, and then prosecute theretofore innocent persons falling into the trap.

IV.

Whether the Government can instigate additional crimes, by theretofore innocent persons, regardless of whether it conceived the first crime.

V.

Whether as a matter of law a defendant can be convicted of an offense where the Government commits any essential element thereof and to complete the offense, must impute its acts to the defendant. Whether the trial court must instruct the jury if requested, and the facts warrant it, that such acts of the Government cannot be imputed to a defendant.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I.

The holding of the Circuit Court of Appeals that the Government can afford opportunities and furnish facilities for a crime and use artifice and stratagem to induce a person to commit a crime, who is not engaged in a criminal enterprise and who has never been charged or suspected of a crime, much less a crime similar to the one into which he was entrapped, is in conflict with the decision of this Court in *U. S. v. Sorrells*, 287 U. S. 435.

II.

The holding of the Circuit Court of Appeals that a defendant could be convicted, even though to complete the offense it was necessary to impute to him an act of the

Government which constituted an essential element of the crime charged, is in conflict with the decision of the Sixth Circuit in *Sherman v. U. S.*, 10 Fed. 2nd 17.

WHEREFORE, your petitioners pray that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify to this Court a complete record of the proceedings of the said Circuit Court, had in the case entitled "*United States of America, Plaintiff-Appellee, v. George Sam Aloisio and William Aloisio, Defendant-Appellants*", No. 8796, to the end that this cause may be reviewed and that the judgment of said Circuit Court may be reversed, and for such further relief as to this Court may seem proper.

Respectfully submitted,

GEORGE SAM ALOISIO
and WILLIAM ALOISIO,

By JAMES C. LEATON,
Their Attorney.

